IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12-1-2007

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.939 of 2003

C. Damodarasamy ... Appellant

Vs.

1. Government of India,
rep.by its Secretary,
Ministry of Finance,
Department of Economic Affairs,
Insurance Division,
New Delhi - 110 001.

2. Life Insurance Corporation of India,
re.by its Chairman,
Central Office, "Yogakshema"
Jeevan Bima Marg, P.B.No.19953,
Mumbai - 400 021.

3. Manager (O.S.)
LIC of India, Coimbatore Division,
Post Bag No.3810,
Trichy Road,
Coimbatore - 641 018. ... Respondents

This Writ Appeal has been filed under Clause 15 of Letters Patent against the order of this court made in W.P.No.9866 of 1999 dated 9.1.2003 writ petition filed under Art. 226 of constitution of India to issue a writ of Declaration that the cut-off date of 1.11.93 prescribed in the proviso to Rule 33 of the Life Insurance Corporation of India (Employees) Pension Rules, 1995 read with the Order dt. 27.11.95 issued by the 3rd respondent are illegal and unconstitutional and consequently direct the respondents to grant regular superannuation pension or compassionate allowance under the said Rules, from the date fixed by the Rules, with all arrears and attendant benefits, including interest thereon.

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For Appellant : Mr.N.G.R.Prasad,
for M/s.Row & Reddy

For 1st Respondent : Mr.P.Wilson,
Asst. Solicitor General

For Respondents 2&3 : Mr.S.Silambannan

J U D G M E N T

N. PAUL VASANTHAKUMAR, J.

This writ appeal is directed against the order passed in W.P.No.9866 of 1999 dated 9.1.2003 dismissing the writ petition filed by the appellant herein seeking regular pension or compassionate allowance under the Life Insurance Corporation of India (Employees) Pension Rules, 1995.

2. The brief facts necessary for disposal of this writ appeal are as follows.

(a) Appellant was appointed as Development Officer in the second respondent Corporation in the year 1962 and prior to his appointment, the appellant worked as Insurance Agent from 1958. The work of the Development Officers will be assessed in terms of certain set of norms to be followed in their performance assessment reports.

(b) On 22.4.1976, the Life Insurance Corporation (Staff) Amendment Regulations, 1976, was issued and as per Regulation 5, if a Development Officer failed to bring in eligible premium equal to five times of his annual remuneration in three preceding years, the appointing authority may terminate his services. Regulation 7 states that such termination would not be a penalty within the meaning of regulation 39 of the Staff Regulations.

(c) It is the case of the appellant that the employees negotiated with the Corporation and as per the agreement dated 10.11.1981, this was in force till the amendment of Staff Regulations. Poor performance by a Development Officer entails reduction in salary and conveyance allowance and transfer to Class-3 post. The same was objected to by the National Federation of Insurance Field Workers' Union and thereafter a tripartite discussion was held between the Corporation, Government and the Federation. Pursuant to that, fresh

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notification setting aside some of the penalties imposed in the 1976 Regulations was issued, which also provided for re-appointment on reduced basic salary as a matter of course after termination of service of a Development Officer, if he did not satisfy the premium requirement. A further understanding was reached, which was later incorporated in the Staff Regulations, which provided for automatic absorption in clause-III.

(d) The case of the appellant is that he was suffering from dislocation of spinal cord and he was on medical leave for more than one year from November, 1984 to December, 1985, due to which his performance was not up to the mark. But the appellant was terminated due to non-reaching of the norms with effect from 6.3.1990 and at that time he completed 27 years of service and had only 21 months of service remaining for his normal retirement.

(e) According to the appellant, the termination of his service does not constitute a penalty. The Life Insurance Corporation of India (Employees) Pension Rules, 1995 (hereinafter referred to as 'Pension Rules') was published and under Rule 3 the Employees, who were in service of the Corporation on or after the 1st January, 1986 to retire before 1.11.1993 and also to those who joined service and retired after 1.11.1993 are entitled to get pension provided an employee is having 10 years of qualifying service. Under Rule 23, resignation/dismissal/removal/termination or compulsory retirement entailed forfeiture of the entire past service and if any person is imposed with a penalty he will not be in a position to get pension. Superannuation pension is provided under Rule 30 and pension on voluntary retirement is provided in Rule 31 on completion of 20 years of service, if accepted by the appointing authority. Rule 33 provides for payment of compassionate allowance not exceeding 2/3rd on normal pension, in case of dismissal/ removal/termination or compulsory retirement, if the competent authority found that the case deserves special consideration. However, the rule was applicable only to the cases of dismissal etc., effected after 1.11.1993.

(f) It is further stated that the employees had to opt for pension instead of provident fund and such of those employees who have already received provident fund had to return the same. The appellant opted to be under the pension scheme by his application dated 11.10.1995 which was rejected by the second respondent by letter dated 27.11.1995 stating that since the appellant's services were terminated from 6.3.1990 his option could not be entertained.

(g) It is also averred in the affidavit that on 25.10.1996, the National Federation of Insurance Field Workers represented to the

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Corporation and requested not to treat the Development Officers, whose services were terminated under the aforesaid Special Rules, cannot be treated as cases of termination and they should be made eligible for full pension or at least compassionate allowance, provided they were terminated but not reappointed on or after 1.1.1986.

(h) Since the appellant's option was negatived, he filed the writ petition for a declaration that the cut-off date of 1.11.1993 prescribed in proviso to Rule 33 of the Life Insurance Corporation of India (Employees) Pension Rules, 1995, read with order dated 27.11.1995 issued by the third respondent are illegal and consequently direct the respondents to grant regular superannuation pension or compassionate allowance from the date fixed by the rules with arrears including interest thereon.

3. The said writ petition was resisted by the respondents by contending that the petitioner was terminated after giving three months notice or salary in lieu thereof as he could not reach the norms due to his deteriorating health conditions. Since the appellant was terminated from service with effect from 6.3.1990 after giving notice and as cut-off date is fixed as 1.11.1993 under Rule 33 of the Life Insurance Corporation of India (Employees) Pension Rules, 1995, the benefit of the said rule is not applicable to the appellant. It is also stated in the counter affidavit that the retirement of the appellant from service by way of penalty is not after 1.11.1993 and therefore he is not entitled to get pension. It is also stated that since the appellant has already been compulsorily retired with effect from 6.3.1990 after giving due notice as per the rules, the appellant is not entitled to get any relief. In the counter affidavit the respondents have justified the fixing of cut-off date as 1.11.1993 for the persons who are entitled to claim compassionate allowance.

4. The learned single Judge dismissed the writ petition filed by the appellant upholding the cut-off date fixed under the Pension Rules. The learned single Judge came to the conclusion that since the appellant was terminated from service, he is not entitled to get pension and as his termination is prior to 1.11.1993 he is not entitled to get compassionate allowance.

5. The learned counsel for the appellant submitted that even though the word "termination" is used for dispensing with the services of the appellant, it is in effect an order similar to compulsory retirement (not as punishment). The learned counsel also argued that merely because the word "termination" is used the appellant having not been punished for any misconduct, depriving the pensionary benefit for which he is otherwise eligible, is unreasonable and irrational,

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particularly when the appellant is entitled to get reappointment under Regulation 12 of the Staff Regulations and if a person is re-employed the past services rendered is to be counted as qualifying service for pension under Rule 18 of the Pension Rules, 1995. The learned counsel further argued that the appellant was having only 21 months of remaining service and he was not re-employed even though he is eligible to be re-employed and therefore there is no justification to deny pension to the appellant as he has put in more than 27 years of service. The learned counsel further submitted that the termination not being by way of punishment under Rule 39 of the Staff Regulations, the respondents are not justified in denying pension to the appellant on the hyper-technical ground that the appellant was terminated from service due to the reason that he has not reached the norms.

6. The learned counsel for the respective respondents submitted that the appellant having been terminated from the service, is not entitled to seek pension. Appellant is also not entitled to get compassionate allowance as his termination was prior to 1.11.1993 and the cut-off date fixed is also valid and it is not irrational. The learned counsels therefore submitted that the learned single Judge was justified in dismissing the writ petition and the said order is liable to be sustained.

7. We have considered the rival submissions of the learned counsel for the appellant as well as the respective counsel for the respondents.

8. The point for consideration in this writ appeal is as to whether the appellant, who was terminated not by way of punishment and who was on service as on 1.1.1986, is entitled to get pension under the Life Insurance Corporation of India (Employees) Pension Rules, 1995, and whether there is any distinction between the termination due to non-reaching of norms and termination due to misconduct.

9. Admittedly in this case, the appellant was terminated at the age of 56 years after completion of 27 years of service due to non-reaching of norms and the appellant was not terminated for any misconduct. Clause 6 of the Schedule-III provides for termination of the services of the Development Officers under certain circumstances. Clause 6(1) provides that the Zonal Manager may terminate the services of a Development Officer by giving him three months notice or salary in lieu thereof, if his annual remuneration in any preceding year is in excess of the expenditure limit, after affording an opportunity to show cause against the process of termination. Clause 11 of Schedule-III provides that nothing contained in the said schedule shall be deemed to affect the right of the competent authority to

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retire or discharge the services of a Development Officer in accordance with the relevant regulations or to affect the right of the disciplinary authority to impose any penalty on him under Regulation 39 on any of the grounds specified therein. Chapter III is a special provision, which provides for termination in case, a Development Officer fails to perform in terms of the norms and as a result of which the annual remuneration in any preceding year is in excess of the expenditure limit. There is no quarrel in this case, the said power has been invoked and the petitioner was terminated with effect from 6.3.1990 by proceedings dated 28.11.1989.

10. Regulation 39 deals with penalties, and the relevant portion reads as under,

> "Penalties:
>
> 39.(1) Without prejudice to the provisions of other regulations, any one or more of the following penalties for good and sufficient reasons, and as hereinafter provided, be imposed by the disciplinary authority specified in Schedule-I on an employee who commits a breach of regulations of the Corporation, or who display negligence, inefficiency or indolence or who knowingly does anything detrimental to the interest of the Corporation, or conflicting with the instructions or who commits a breach of discipline, or is guilty of any other act prejudicial to good conduct-
> (a) Censure;
> (b) Withholding of one or more increments either permanently or for a specified period;
> (c) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of order;
> (d) reduction to a lower service, or post, or to a lower time scale, or to a lower stage in a time-scale;
> (e) compulsory retirement;
> (f) removal from service which shall not be a disqualification for future employment;
> (g) dismissal."

11. As rightly contended by the learned counsel for the appellant, the appellant was terminated from service as per Schedule-

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III Clause 6 and not under Regulation 39(1) of the Staff Regulations, 1960. Rule 3(1) of the Pension Rules states that the said rules are applicable to persons who were in service of the Corporation on or after the 1st day of January, 1986, but had retired before the 1st day of November, 1993, provided he exercises his option to claim pension. It is also not in dispute that an Officer terminated under Schedule-III clause 6 is entitled to get re-employment/re-appointment in the Corporation under Regulation 12. Pension Rule 18 states that if a person is re-employed in accordance with the provisions contained in Regulation 12 of the Staff Regulations or an employee being a Development Officer, whose services had been terminated in accordance with the provisions contained in schedule-III to the staff regulation, etc., and who is re-appointed in the service of the Corporation, the service of such person or officer prior to the re-employment or re-appointment, as the case may be, shall be counted in the qualifying service for pension.

12. Admittedly the appointment was terminated in exercise of the powers conferred under Schedule-III clause 6 and he is entitled to be re-appointed in the Corporation. But he was not re-appointed since he was having only 21 months of remaining service. Once the eligibility of the appellant for re-employment/re-appointment is admitted, on re-employment, the earlier services rendered by the appellant is countable. It is unjust to deny pension to the appellant solely on the technical ground since the appellant was terminated not by way of punishment, but as per Schedule-III, Clause 6 of the Service Regulations and he was not re-appointed/re-employed. It is not in dispute that the appellant has put in 27 years of service and during the performance review as contemplated under Schedule-III, Clause 6, the appellant was terminated. It should be, in the normal circumstances, treated as compulsory retirement otherwise than punishment. Once a person is not allowed to continue after certain period of service due to lack of utility, the past services rendered by him cannot be totally obliterated and for the past services rendered, he is entitled to get pension, provided the termination was not by way of punishment.

13. (a) The Honourable Supreme Court considered the issue as to whether a person, who is compulsorily retired due to lack of utility will lose the terminal benefits or not, in the decision reported in AIR 1979 SC 193 = (1979) 2 SCC 34 (Chief Justice of A.P. v. L.V.A. Dixitulu) and in para 39 held as follows,

> "39. ..... It is well settled that compulsory retirement simpliciter, in accordance with the terms and conditions of service, does not

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amount to dismissal or removal or reduction in rank under Article 311 or under the Service Rules because, the government servant does not lose the terminal benefits already earned by him."

(b) In yet another Judgment reported in AIR 1992 SC 1020 = *(1992) 2 SCC 299 (Baikuntha Nath Das v. Chief District Medical Officer)* in para 12 the effect of compulsory retirement due to loss of utility and termination not by way of punishment is considered. The relevant portion from para 12 reads as follows,

"12. As far back as 1970, a Division Bench of this Court comprising J.C. Shah and K.S. Hegde, JJ. held in *Union of India* v. *J.N. Sinha* that an order of compulsory retirement made under F.R. 56 (*j*) does not involve any civil consequences, that the employee retired thereunder does not lose any of the rights acquired by him before retirement and that the said rule is not intended for taking any penal action against the government servant. It was pointed out that the said rule embodies one of the facts of the pleasure doctrine embodied in Article 310 of the Constitution and that the rule holds the balance between the rights of the individual government servant and the interest of the public. The rule is intended, it was explained, to enable the government to energise its machinery and to make it efficient by compulsorily retiring those who in its opinion should not be there in public interest. ....."

(c) In the decision reported in AIR 1996 SC 2030 = (1996) 4 SCC 504 (Allahabad Bank Officers' Assn. v. Allahabad Bank) in para 5 it is held as follows,

"5. The power to compulsorily retire a government servant is one of the facets of the doctrine of pleasure incorporated in Article 310 of the Constitution. The object of compulsory retirement is to weed out the dead wood in order to maintain efficiency and initiative in the service and also to dispense with the services of those whose integrity is doubtful so as to preserve purity in the administration. Generally speaking, Service Rules provide for compulsory

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retirement of a government servant on his completing certain number of years of service or attaining the prescribed age. His service record is reviewed at that stage and a decision is taken whether he should be compulsorily retired or continued further in service. There is no levelling of a charge or imputation requiring an explanation from the government servant. While misconduct and inefficiency are factors that enter into the account where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held and there is no duty to hold an enquiry is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal they form the very basis on which the order is made, as pointed out by this Court in *Shyam Lal* v. *State of U.P.*1 and *State of Bombay* v. *Saubhagchand M. Doshi*2. Thus, by its very nature the power to compulsorily retire a government servant is distinct and separate from the power to punish him by way of removal, dismissal etc. for misconduct. A government servant who is compulsorily retired does not lose any part of the benefit that he has earned during service. Thus, compulsory retirement differs both from dismissal and removal as it involves no penal consequences. Though compulsory retirement deprives a government servant of the chance of serving and getting his pay till he attains the age of superannuation and thereafter to get pension, that cannot be regarded in the eye of law as punishment as pointed out in the case of *Shyam Lal*1 and *Union of India* v. *M.E. Reddy*3. Thus, compulsory retirement differs from dismissal and removal both in its nature and incidence or effects. Therefore, compulsory retirement is not considered prima facie and per se a punishment and does not attract the provisions of Article 311. ....."

14. It is well settled in law that pension is to be paid for the past services rendered. To explain this position, paragraphs 19 and 20 of the decision reported in (1983) 1 SCC 305 (*D.S. Nakara v. Union of India*) can be usefully referred to which reads as follows,

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"19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antequated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in *Deokinandan Prasad* v. *State of Bihar*8 wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyones discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in *State of Punjab* v. *Iqbal Singh*."

The said position is further explained in the decision reported in 1992 Supp (1) SCC 664 (All India Reserve Bank Retired Officers Assn. v. Union of India) wherein in para 5 the Honourable Supreme Court held thus,

"5. The concept of pension is now well known and has been clarified by this Court time and again. It is not a charity or bounty nor is it gratuitous payment solely dependent on the whim or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of compensation for past service. It is in fact in the nature of a social security plan to provide for the December of life of a

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> superannuated employee. Such social security plans are consistent with the socio-economic requirements of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution. All the Bank employees who had retired prior to November 1, 1990 were governed by the CPF scheme. However, by the introduction of the pension scheme under the Regulations those employees who retired on or after January 1, 1986 have been given an option to switch over to the pension scheme provided they refund the employers contribution to the CPF scheme together with interest thereon and further agree to pay interest at six per cent per annum from the date of receipt of the fund amount on superannuation till the repayment thereof. The grievance of the petitioners is that all employees who were governed by the CPF scheme on the date of their superannuation constituted a homogeneous class and the pension scheme introduced under the Regulations seeks to divide them between those who retired on or before December 31, 1985 and those who retired on and after January 1, 1986; to the latter the benefit of the pension scheme is extended by option while to the former that benefit is denied altogether. This artificial division between members belonging to the same group, contend the petitioners, is a flagrant violation of Article 14 of the Constitution as held in *Nakara case*1."

15. Merely because the appellant was terminated by invoking Schedule-III, Clause 6, the earlier services rendered by him cannot be ignored as in the case of termination due to punishment. If the contention of the respondents is accepted as decided by the learned single Judge, there will be no difference between the person who is terminated due to imposition of penalty and to the person terminated due to lack of utility. If the said distinction is accepted, the appellant having been in service as on 1.1.1986, is entitled to get pension on fulfilling other conditions.

16. Yet another factor in this case as rightly contended by the learned counsel for the appellant is that the appellant was a Developmental Officer of the Life Insurance Corporation, who has to travel for attaining the target fixed for him by getting policies. In the affidavit filed in support of the writ petition the appellant

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has clearly stated that he was suffering from dislocation of the spinal cord and was on medical leave for more than one year from November, 1984 to December, 1985 and due to his ill-health, his performance was not up to the mark. The said disease is occurred during the course of the employment of the appellant and the same is not denied in the counter affidavit.

17. Bearing the same in mind the Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act, 1995 was enacted by the Parliament, which came into force from 1.1.1996, wherein section 47 contemplates the employer to give alternate employment to the persons with disabilities either by giving alternate employment if there is vacancy available and if no vacancy is available, by creating a supernumerary post with pay protection and promotional opportunities.

18. A similar issue arose before the Honourable Supreme Court in the decision reported in AIR 1991 SC 1003 = (1991) 1 SCC 731 (Anand Bihari v. Rajasthan State Road Transport Corporation, Jaipur). In the said case, the point for consideration was whether the drivers of the Transport Corporation who were terminated on the ground that they have developed eye-sight which was not the standard required to drive buses due to occupational disease, would be covered by sub-clause (b) of Section 2(oo) and thus would not amount to retrenchment within the meaning of S.2(oo). The Honourable Supreme Court in para 8 (scc p.9) of the Judgment held as follows,

> "8. Although the order of termination of service per se cannot be faulted on the ground of the breach of the Act, the important question that still remains to be considered is whether in the circumstances of the case and against the background of the relevant provisions of our Constitution, it can be said that the action of the Corporation is proper, equitable and justified. The facts on record show that all the workmen have put in service with the Corporation for long periods. All of them are above 40 years of age. Their superannuation age is 58 years. There is no dispute that they developed a weak or sub-normal eyesight or lost their required vision on account of their occupation as drivers in the Corporation. As is commonly known, the drivers of the buses run by the Corporation such as the present one, have to drive the heavy motor vehicles in sun, rain, dust and dark hours of

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night. In the process, they are exposed to the glaring and blazing sunlight and beaming and blinding lights of the vehicles coming from the opposite direction. They are required to strain their eyesight every moment of the driving, keeping a watchful eye on the road for the bumps, bends and slopes, and to avoid all kinds of obstacles on the way. It is this constant straining of eyes on the road which takes its inevitable toll of the vision. The very fact that in a short period, the Corporation had to terminate the services of no less than 30 drivers who are before us shows the extent of the occupational hazard to which the drivers of the Corporation are exposed during their service. It also shows that weakening of the eyesight is not an isolated phenomenon but a widespread risk to which those who take the employment of a driver expose themselves. Yet the Corporation treats their cases in the same manner and fashion as it treats the cases of other workmen who on account of reasons not connected with the employment suffer from ill-health or continued ill-health. That by itself is discriminatory against the drivers. The discrimination against the employees such as the drivers in the present case, also ensues from the fact that whereas they have to face premature termination of service on account of disabilities contracted from their jobs, the other employees continue to serve till the date of their superannuation. Admittedly, no special provision is made and no compensatory relief is provided in the service condition for the drivers for such premature incapacitation. There is no justification in treating the cases of workmen like drivers who are exposed to occupational diseases and disabilities on par with the other employees. The injustice, inequity and discrimination is writ large in such cases and is indefensible. The service conditions of the workmen such as the drivers in the present case, therefore, must provide for adequate safeguards to remedy the situation by compensating them in some form for the all-round loss they suffer for no fault of theirs."

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Ultimately, the Honourable Supreme Court in the above referred Judgment, taking note of the nature of the duty performed by the drivers and similarly placed persons, who were not having the same eye-sight, were retained in service in other departments other than drivers, thought fit to suggest to provide alternate employment along with retirement benefits and also ordered to pay additional compensation amount.

19. Here in this case, under the service regulations, re-employment or re-appointment is permissible to the persons like appellant and on such re-employment/re-appointment the past services rendered also shall be entitled to be counted for the purposes of pension. However, the appellant is denied the payment of pension on the technical ground that he is a terminated employee of the corporation, forgetting the fact that the said termination was not by way of punishment but by way of dispensing with the services due to "non-utility".

20. As rightly contended by the learned counsel for the appellant, only few people will be available to claim the benefit of pension similar to the appellant herein, since a cut-off date is given to claim the pension that the person should be in service as on 1.1.1986. It is also to be noted that if the appellant was terminated even by way of punishment after 1.11.1993, he could have been sanctioned with compassionate allowance. A person who is terminated due to the proved charges is entitled to get compassionate allowance as per Rule 33 of the Pension Rules, 1995, whereas a person who is terminated otherwise than punishment is denied of pension as well as compassionate allowance. The said discrepancy also supports the arguments of the learned counsel for the appellant that the appellant is entitled to get pension taking note of the fact that he was on service on 1.1.1986 and his termination was due to performance assessment and not by way of punishment.

21. Similar issue arose before the Honourable Supreme Court in the decision reported in 2000-I LLJ 1617 (Bank of India v. Indu Rajagopalan & Others) wherein pension was denied to the persons, who went on voluntary retirement with effect from 1.1.1986 to 31.10.1993 and at that time there was no pension scheme available. Taking note of the said factual aspect and having regard to the fact that the persons went on voluntary retirement during that period would be very limited, the Honourable Supreme Court upheld the order of the High Court to extend the benefit of sanctioning pension to those retired voluntarily. For proper appreciation paragraph 3 of the Judgment is extracted hereunder,

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"3. All that has happened is in such of the banks where a Scheme for voluntary retirement was available, certain employees retired under that scheme. Now a comprehensive Pension Scheme has been framed which came into force w.e.f. November 1, 1993 and applicable uniformly to all Bank employees which provides for voluntary retirement as well. The applicability of these Rules to those employees who have voluntarily retired w.e.f. January 1, 1986 to October 31, 1993 is raised in these matters. It is not possible for Shri V.R.Reddy learned senior counsel who appears for the appellants to point out that there is any significant financial or other burden or difference so far as those who had voluntarily retired and those who had ordinarily retired. In that event where there is no distinction, the authorities having sought to make a distinction and not applied the regulations framed subsequent to their retirement, the High Court has given appropriate directions. We also notice that the number of employees who have retired in this manner is also very small. Therefore we think no interference is called for in these appeals. The appeals are, therefore, dismissed with no order as to costs."

The above judgment is followed by one of us (P.Sathasivam,J) in an unreported decision in W.P.No.6327 of 1996 dated 30.8.2000 (J.Geraldin Cardoza and another v. Union of India and others). Facts in that case and the facts in the present case are even though not similar, the underlying principle in that case may be followed in this case, as the number of persons who are terminated like the appellant for the alike reason will be very few. Therefore it is inequitable to deny pension to the appellant as he has put in 27 years of continuous service, entitled to re-employment/re-appointment and in such an event, he is entitled to count the earlier services as qualifying service for pension. Merely because he was not re-employed/re-appointed, his earlier service of 27 years cannot be denied for the sanction of pension.

22. In the light of our above finding and having regard to the fact that the appellant's service was not terminated by way of punishment, but the termination of the appellant is similar to the one of compulsory retirement not by way of punishment, we are of the view that the appellant is entitled to get pension taking into

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consideration his 27 years of his service in the second respondent Corporation.

23. In the result, the order of the learned single Judge is set aside. The option exercised by the appellant on 11.10.1995 is directed to be accepted by the second respondent and on the appellant satisfying other formalities, if any, the respondents are directed to sanction pension to the appellant from 1.11.1993 expeditiously.

The writ appeal is disposed of with the above direction. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vr/

To

1. The Secretary to Govt. of India,Ministry of Finance,
   Department of Economic Affairs, Insurance Division,
   New Delhi - 110 001.

2. The Chairman, Life Insurance Corporation of India,
   Central Office, "Yogakshema", Jeevan Bima Marg,
   P.B.No.19953, Mumbai - 400 021.

3. The Manager (O.S.), LIC of India,
   Coimbatore Division, Post Bag No.3810, Trichy Road,
   Coimbatore - 641 018.

+1cc to M/s. Row & Reddy, Advocate Sr 2478

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